

CIVIL WORKS ENVIRONMENTAL DESK REFERENCE (2002 Revision)

INTRODUCTION

Numerous environmental laws and executive orders influence and guide water resources planning, development and management within the Civil Works program of the U.S. Army Corps of Engineers. Many of these laws identify compliance requirements, and several establish regulatory programs that the Corps of Engineers implements in support of National environmental objectives. These directives also support Federal responsibility for environmental quality and Corps participation in the restoration and protection of ecological resources and other aspects of the environment.

The Environmental Desk Reference IS a document intended to serve as a desk top reference on environmental statutes and executive policy for Corps of Engineers personnel. It contains summary profiles of environmental laws applicable to the Civil Works program. Included in these profiles are legal citations, common names and summaries of the statutes and the Corps implementation guidance. Each profile also identifies the general requirements for environmental compliance. It also contains copies of environmental Executive Orders, two reference tables related to laws and regulations. (See Document Organization below.)

The Environmental Desk Reference is NOT the authority on Corps policy regarding implementation of these laws. The information in this document is for reference purposes, and is not intended as a substitute for HQUSACE policy or implementation guidance. Nor is this reference intended to replace the advice of Corps counsel. Implementation of the laws in the Civil Works program may be affected by changes in policy, and by amendments to the laws. In some instances, Federal case law may also determine how the laws are interpreted and influence policy development and implementation. Users should check the latest HQUSACE guidance for details regarding Corps policy on implementing and complying with these statutes. Users should also consult Corps counsel regarding assistance in applying legislative information in light of the context of the project, circumstances, or action that defines their need for this information.

Why this document? While many Corps water resources staff are familiar with the more popular laws (e.g., NEPA, Clean Water Act, WRDAs), other laws are less frequently encountered and less well known. In many instances, copies of environmental laws and their implementing regulations, as well as information on citations, are not easily or readily accessible to working staff on a day to day basis.

Corps Civil Works staff have frequently asked for a ready reference that includes the information contained in this desk reference (e.g., summaries of laws, basic lists of citations, and a cross-reference to available Corps guidance.) From the onset of the development of this document, it was recognized that numerous sources of information on environmental laws exist. It was also recognized that it may be difficult to assure that this document is kept up-to-date, given the dynamics of legislation and the uncertainty of future funding and personnel resources. These are additional reasons to consult HQUSACE or Corps Counsel when users require information on the latest Corps policies and guidance concerning environmental directives.

A number of existing references were examined in the early stages of developing this document. It was found that a number of good references are available that describe environmental laws, their citations and history. However, few references include information in the context of the Civil Works program.

Applicability of the Laws and Executive Orders. This desk reference includes numerous laws and Executive Orders of varying relevance to the Civil Works program. Some are routinely applicable to every study or project. Others may only occasionally apply to Corps studies, projects or programs, depending on specific circumstances. Some establish national policy and environmental goals to which the Corps can contribute, not solely through compliance but through contributions of Civil Works programs and activities. A few of the laws and Executive Orders may never apply to the Civil Works program, but they are included in the reference to help users assess their applicability should it be questioned in the course of a study or project activity.

Compliance Checklist for Planning Documents. Compliance with the following eight statutes is required prior to the signing of a PCA, and is therefore a prerequisite to the construction of any Corps project. These essential eight laws are: 1) the National Environmental Policy Act; 2) the Endangered Species Act; 3) the Coastal Zone Management Act; 4) the Clean Water Act (Sections 401, 404r, 404b(1)); 5) the Marine Protection, Research, and Sanctuaries Act (Section 103); 6) the National Historic Preservation Act (Section 106); 7) the Fish and Wildlife Coordination Act; and 8) the Clean Air Act.

Document Organization.

- Part I contains summaries of the environmental laws in the context of the Corps' Civil Works program.
- Part II contains full text copies of a number of executive orders relevant to the environment and environmental resources. Users should check with HQUSACE regarding implementation policy and guidance on these orders.
- Appendix A is a "cross reference" table to help users find citations for laws using common names. This table uses the most "popular" names and Public Law citations for the environmental laws, however users should note that these popular names often differ from the legislative titles of the parent laws, or the amendments. It is critical to note that new legislation frequently amends existing environmental laws, and that often these amendments are included in laws that are not typically or intuitively related to the original legislation. Users should also be aware that most environmental legislation must be implemented in conjunction with other laws.
- Appendix B provides a summary of the Corps' guidance identified in the summary profiles. The table is organized by Civil Works functional area, and identifies guidance issued by or relevant to the functional area. It also includes references to relevant Army and Department of Defense guidance.
- The remainder of this Introduction contains:
 - Information about useful electronic resources, including websites.
 - An explanation of the legal citations used in this desk reference
 - A summary of the various types of Corps guidance documents that pertain to the implementation of environmental laws.

Electronic Resources. A number of electronic resources are available for readers to locate and read the published versions of environmental laws, regulations and case law, and the number of these resources continue to increase. Several web pages relevant to laws and regulations are identified below. Note however, that web pages are dynamic, links change, and, like any other data base, these sources are only as current as the most recent update.

Web Sites:

- **United States Code:** <http://www.access.gpo.gov/congress/cong013.html>
or <http://www4.law.cornell.edu/uscode/#SECTIONS>
- **Public Laws:** <http://www1.access.gpo.gov/GPOAccess/docssitesearch/nara/nara005.html>
- **Code of Federal Regulations:** <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>
or <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>
- **Thomas** (text of pending legislation, Congressional Record): <http://thomas.loc.gov/>
- **Executive Orders:** <http://www.nara.gov/fedreg/eo.html>
- **Corps of Engineers Regulations:** <http://www.usace.army.mil/inet/usace-docs/eng-regs>
- **Corps Civil Works Planning and Policy Division Homepage:**
<http://www.usace.army.mil/inet/functions/cw/cecwp/>
- The Defense Environmental Network & Information eXchange (DENIX). DENIX was designed to provide DoD personnel in the environmental security arena, timely access to environmental legislative, compliance, restoration, cleanup, safety & occupational health, security, and DoD guidance information. DENIX is accessible from: <https://www.denix.osd.mil/>. Environmental compliance information such as the Environmental Review Guide for Operations (ERGO) Manual and The Environmental Assessment and Management (TEAM) guide are also available on DENIX. The TEAM guide, published in 1994 by a DoD working group, provides compilations of applicable Federal regulations, synthesizes environmental regulations and describes management actions to be used in conducting environmental compliance assessment.

Subscription Services: There are two electronic resources used within the Corps primarily by attorneys:

- LEXIS - is an electronic database that provides information on statutes, executive orders, and regulations, which can be searched using key words. It is available by subscription through LEXIS-NEXIS Services. Subscriber and hourly access fees vary depending upon the service and subscription option selected. Within the Corps, this service is usually used by offices of counsel.
- WESTLAW - is an electronic database that provides access to the USCA, Federal regulations, case law, and administrative materials, as well as other law information and specialized data bases. West Publishing Company has a contract with the Library of Congress through the Federal Library and Information Center Committee (FLICC). The Army Corps of Engineers has an agreement with FLICC which has contracted with West Publishing Company for WESTLAW under a network arrangement. Corps offices can subscribe to WESTLAW; subscriber and hourly access fees vary depending upon the subscription option selected. Within the Corps, this service is usually used by offices of counsel.

CITATIONS USED IN THIS ENVIRONMENTAL DESK REFERENCE

1. Why are citations for laws provided as United States Code (U.S.C.) in the profiles of this desk reference, instead of as Public Law (P.L.) numbers? A description of the two different systems of citation will help answer this question.

The Public Law is a general classification of law. Public Laws are acts which relate to the public as a whole. When passed, they are given a Public Law number and then given a **Statutes at Large** number. Then the law is codified in the **United States Code** (U.S.C.).

Subsequent laws, with new Public Law numbers, may amend the original law. Sometimes the amendment is an extensive revision of the entire law, and other times only minor changes are made. Also, the legislative title of the amending laws may be the same or different. In each instance however, a new Public Law number is assigned to the law. In addition, some of the amendments to a given law appear as parts of other laws not related to the "parent" law. This makes it particularly difficult to obtain up-to-date information on an environmental law by using Public Law citations. For example, in developing this desk reference, over a dozen Public Laws were identified that amend the "Clean Water Act" (the Clean Water Act is just one of the amendments to the Federal Pollution Control Act which was originally passed in 1948). Usually, amendments contain only the modified portion(s) of the law. Special printings of a law, with the cumulative amendments, at the time of printing, are sometimes available, but not always.

Another system, the **United States Code, Annotated** (U.S.C.A.), is a more practical source of the text of laws that includes amendments to date. The Code contains a consolidation and codification of the general laws of the United States. The laws are organized by subject matter under 50 title headings. These titles are shown in **Table 1**. The U.S.C.A. provides the current status of the laws, as amended. It is intended to present the laws in a concise form so that one does not have to go to the many volumes of the Statutes at Large containing the individual amendments.

In the U.S.C.A., a statute is found under a designated title, chapter and section number in the principal volume, and any recent amendments or changes will be found under the same title, chapter and section number in the supplementary pocket part. The U.S.C.A. is kept up to date via Cumulative Annual Pocket Parts, also known as Supplemental Pamphlets. *Citations from the U.S.C.A. are usually presented as U.S.C., with the "annotated" being implied. The U.S.C. citations in this desk reference are actually from the annotated volumes.*

2. What are other citations that are sometimes used to refer to a law or the implementing regulations of a law?

Statutes at Large (STAT) is an official compilation of the acts and resolutions of each session of Congress. It is published by the Office of the Federal Register in the National Archives and Records Service. The Statutes at Large are a chronological arrangement of the laws exactly as they have been enacted; the laws are not arranged according to their subject matter, and the Statutes at Large do not show the current status of an earlier law that has been amended one or more times.

Code of Federal Regulations (C.F.R.) is the annual accumulation of executive agency regulations published in the daily Federal Register, combined with regulations issued earlier that are still in effect. The C.F.R. is divided into 50 titles, each representing a broad subject area. The C.F.R. titles are shown in **Table 2**. The C.F.R. contains the general body of regulatory laws

governing practice and procedure before Federal administrative agencies. Some of the regulations developed by HQUSACE, that affect the general public or other agencies, are codified in the C.F.R. A number of the codified regulations of other agencies that affect the Corps Civil Works program are identified in this desk reference. Citation format is: “§33 C.F.R. 325”, where 33 is the title number, and 325 is the section number.

Federal Register (F.R.): Federal agencies publish documents in the Federal Register. The F.R. and the C.F.R. publications must be used together to determine the latest version of any given rule. The F.R. is published daily and includes texts of new agency rules and regulations, proposed rules and regulations, and a calendar of the meetings and proceedings of rule-making bodies. The F.R. also publishes the texts of executive orders and publications. The F.R. groups documents under 5 headings: Presidential Documents, Rules and Regulations, Proposed Rules, Notices, and Sunshine Meetings. The section on Rules contains a summary of each rule, and cites the title and chapter numbers that are affected. After final rules are published in the F.R., they are eventually codified in the C.F.R.

Table 1. TITLES OF UNITED STATES CODE and UNITED STATES CODE ANNOTATED

Title Number	Title	Title Number	Title
1.	General Provisions,	26.	Internal Revenue Code.
2.	The Congress.	27.	Intoxicating Liquors.
3.	The President.	28.	Judiciary and Judicial Procedure.
4.	Flag and Seal, Seat of Government, and the States.	29.	Labor.
5.	Government Organization and Employees.	30.	Mineral Lands and Mining.
6.	Surety Bonds (<i>See Title 31, Money and Finance</i>).	31.	Money and Finance.
7.	Agriculture.	32.	National Guard.
8.	Aliens and Nationality.	33.	Navigation and Navigable Waters.
9.	Arbitration.	34.	Navy (<i>See Title 10, Armed Forces</i>),
10.	Armed Forces.	35.	Patents.
11.	Bankruptcy.	36.	Patriotic Societies and Observances.
12.	Banks and Banking.	37.	Pay and Allowances of the Uniformed Services.
13.	Census.	38.	Pensions, Bonuses and Veterans Relief Benefits.
14.	Coast Guard.	39.	Postal Service.
15.	Commerce and Trade.	40.	Public Buildings, Property, and Works.
16.	Conservation.	41.	Public Contracts.
17.	Copyrights.	42.	The Public Health and Welfare.
18.	Crimes and Criminal Procedure.	43.	Public Lands.
19.	Customs Duties.	44.	Public Printing and Documents.
20.	Education.	45.	Railroads.
21.	Food and Drugs.	46.	Shipping.
22.	Foreign Relations and Intercourse.	47.	Telegraphs, Telephones, and Radiotelegraphs.
23.	Highways.	48.	Territories and Insular Possessions.
24.	Hospitals and Asylums.	49.	Transportation.
25.	Indians.	50.	War and National Defense.

Table 2. TITLES OF THE CODE of FEDERAL REGULATIONS

Title Number	Title	Title Number	Title
1.	General Provisions	26.	Internal Revenue
2.	The Congress (reserved)	27.	Alcohol, Tobacco Products and Firearms
3.	The President	28.	Judicial Administration
4.	Accounts	29.	Labor
5.	Administrative Personnel	30.	Mineral Resources
6.	Economic Stabilization (reserved)	31.	Money and Finance: Treasury
7.	Agriculture	32.	National Defense
8.	Aliens and Nationality	33.	Navigation and Navigable Waters
9.	Animals and Animal Products	34.	Education
10.	Energy	35.	Panama Canal (reserved)
11.	Federal Elections	36.	Parks, Forests, and Public Property
12.	Banks and Banking	37.	Patents, Trademarks, and Copyrights
13.	Business Credit and Assistance	38.	Pensions, Bonuses, and Veterans= Relief
14.	Aeronautics and Space	39.	Postal Service
15.	Commerce and Foreign Trade	40.	Protection of the Environment
16.	Commercial Practices	41.	Public Contracts and Property Management
17.	Commodity and Securities Exchange	42.	Public Health
18.	Conservation of Power and Water Resources	43.	Public Lands: Interior
19.	Customs Duties	44.	Emergency Management and Assistance
20.	Employees= Benefits	45.	Public Welfare
21.	Food and Drugs	46.	Shipping
22.	Foreign Relations	47.	Telecommunications
23.	Highways	48.	Federal Acquisition Regulations System
24.	Housing and Urban Development	49.	Transportation
25.	Indians	50.	Wildlife and Fisheries

Corps Guidance

Official Corps guidance publications:

ENGINEER REGULATIONS (ER)
ENGINEER CIRCULARS (EC)
ENGINEER MANUALS (EM)
ENGINEER TECHNICAL LETTERS (ETL)
ENGINEER PAMPHLETS (EP)

EP 1165-2-1, "Digest of Water Resources Policies and Authorities" is commonly referred to as the "Policy Digest".

EP 1105-2-100, "Guidance for Conducting Civil Works Planning Studies" is commonly referred to as the "Planning Guidance Notebook" or the "PGN" (pronounced "pigeon").

Codified policy and implementing guidance:

Corps guidance and policy developed by the Corps that has implications for other agencies or the general public is first published in the Federal Register for comment; the final rules are also published in Federal Register, and later in the Code of Federal Regulations.

Supplemental guidance:

The Corps supplements its regulations with Guidance Letters that provide guidance to districts on specific issues:

POLICY GUIDANCE LETTERS	(PGL) (See: http://www.usace.army.mil/inet/functions/cw/cecwa/pglindex.htm)
REGULATORY GUIDANCE LETTERS	(RGL) (See: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm
DREDGING GUIDANCE LETTERS	(DGL)
COUNSEL GUIDANCE LETTERS	(CGL)